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February 4, 2008

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RE: ARIZONA PUBLIC SERVICE COMPANY – TO MODIFY DECISION NO 67744 RELATING TO THE SELF
BUILD OPTION – DOCKET NO E-01345A-07-0420

Attached is the Rebuttal Testimony of Arizona Public Service Company's witness Patrick Dinkel in the above
referenced matter regarding the modification of Decision No 67744 relating to the self build option.

Sincerely,

Barbara Klemstine

BK/dst

Attachments

CC: Christopher Kempley
Ernest Johnson
Lyn Farmer
Janet Wagner
Parties of Record

Arizona Corporation Commission
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REBUTTAL TESTIMONY OF PATRICK DINKEL
On Behalf of Arizona Public Service Company
Docket No. E-01345A-07-0420

February 4, 2008

1 **REBUTTAL TESTIMONY OF PATRICK DINKEL**
2 **ON BEHALF OF ARIZONA PUBLIC SERVICE COMPANY**
3 **(Docket No. E-01345A-07-0420)**

4 **Q. PLEASE STATE YOUR NAME.**

5 A. My name is Patrick Dinkel.

6 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?**

7 A. Yes, I filed direct testimony in this docket on January 11, 2008.
8

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. The purpose of my rebuttal testimony is to respond to Mr. Theodore L. Roberts,
11 who testified on behalf of Mesquite Power, L.L.C, Southwestern Power Group
12 II, and Bowie Power Station, L.L.C ("Mesquite/SWPG/Bowie"), and asserted
13 that the self-build provisions of Decision No. 67744 should be modified. I will
14 also respond to Mr. Ben C. Trammel of the Electric Generation Alliance
15 ("EGA") who, in addition to supporting the modification of Decision No. 67744,
16 appears to suggest that several significant modifications should also be
17 incorporated into the Recommended Best Practices for Utility Procurement
18 ("Best Practices") that were adopted by the Commission in Decision No. 70032
19 on December 13, 2007. Throughout my testimony, I refer to Mesquite/
20 SWPG/Bowie and EGA as "Merchant Intervenors."

21 **Q. IN GENERAL, WHAT IS YOUR POSITION ON THE DIRECT**
22 **TESTIMONY PROVIDED BY THE OTHER WITNESSES IN THIS**
23 **DOCKET?**

24 A. APS agrees with the position of Commission Staff witness Barbara Keene and
25 RUCO witness Stephen Ahearn that no modification to Decision No. 67744 or
26 the Settlement Agreement that was adopted, with modifications, by that

1 Decision (the "Settlement") are necessary. The conditions associated with
2 pursuing any self-build alternatives contained in the Settlement represents a
3 reasonable and carefully balanced approach to allowing participants in the
4 wholesale market an opportunity to compete, while maintaining the flexibility
5 necessary to allow the Company to meet its mandate to acquire reliable, cost-
6 effective resources for its customers. While APS is recommending that the
7 Commission adopt a time frame for self-build proceedings, as a matter of
8 commercial practicality, the Company believes that such a timetable does not
9 need to actually modify Decision No. 67744. The proposals contained in Mr.
10 Roberts' and Mr. Trammel's testimony would upset the balance achieved in the
11 Settlement and unnecessarily limit the flexibility needed for prudent resource
12 procurement. For those reasons, APS is opposed to their various
13 recommendations to modify Decision No. 67744, including the
14 recommendations to revise the recently approved procurement Best Practices, to
15 empower an independent monitor to make procurement decisions, and to
16 prohibit the Company from owning generation assets.

17 **Q. MR. ROBERTS CONTENDS THAT THERE WERE "SHARP**
18 **DISAGREEMENTS" AMONG THE PARTIES AND THE COMMISSION**
19 **DURING THE PROCEEDINGS IN DOCKET NO. E-01345A-06-0464**
20 **(THE "YUMA PROCEEDING") CONCERNING THE**
INTERPRETATION AND APPLICATION OF DECISION NO. 67744
WITH REGARD TO THE SELF-BUILD OPTION. DO YOU AGREE?

21 **A.** No. First, I believe APS and the Commission Staff were in general agreement
22 that APS's submission was consistent with the requirements of Decision No.
23 67744. Second, much of the Merchant Intervenor's objections were based on
24 the procedure APS followed in the RFP, not on an interpretation of Decision No.
25 67744. Those objections were addressed in the Best Practices. APS, the
26 Merchant Intervenor, and other stakeholders participated in the proceeding

1 leading to Decision No. 70032. That proceeding and the resulting Best Practices
2 represent a reasonable and balanced approach to procurement practices for all
3 Arizona electric utilities that are subject to regulation by the Commission.
4 Third, notwithstanding his explanation, the basis for Mr. Roberts' request to
5 delete the phrase "from the competitive wholesale market" is not entirely clear.
6 However, any change in the language that would have a substantive effect would
7 further undermine the balance agreed to in the Settlement and Decision No.
8 67744, and accordingly, APS opposes any such unilateral attempt to do so.

9 **Q. WHAT WAS THE COMMISSION'S RESPONSE TO APS'S YUMA**
10 **APPLICATION AND THE INTERVENORS' ISSUES?**

11 A. APS's application contained an analysis showing that the "self-build"
12 alternatives were the least cost options and best met the need for resources in
13 Yuma. After examination of this analysis, the Commission Staff agreed with
14 APS's conclusions and supported its application. After a full evidentiary
15 hearing, and based upon the evidence and testimony provided, the Commission
16 authorized the Company to pursue asset ownership. Subsequent to that decision,
17 the Commission held workshops with stakeholders and other interested parties,
18 as ordered in Decision No. 67744. As Staff indicated in those workshops, the
19 workshops were designed to consider procurement rules for all jurisdictional
20 Arizona utilities. Those workshops resulted in the development of the
21 Commission's procurement Best Practices. Among other things, the Best
22 Practices provide for the appointment of an Independent Monitor ("IM") to
23 oversee solicitations, whether or not an affiliate is a bidding participant in a
24 Request for Proposal ("RFP"). I agree with Commission Staff that the Best
25 Practices appropriately address any perceived issues raised by the intervenors in
26 the Yuma proceeding.

1 Q. IS IT NECESSARY TO MODIFY DECISION NO. 67744 TO
2 INCORPORATE THE BEST PRACTICES?

3 A. Not at all. To begin with, APS fully supports the Best Practices as it provides
4 meaningful guidance regarding procurement practices. Furthermore, APS
5 understands, for the reasons Commission Staff discussed in its direct testimony,
6 that it is in the Company's best interests to follow the Best Practices guidelines.

7 In addition, the purpose of the Commission workshops that resulted in the Best
8 Practices was to address procurement practices that would be applicable to all
9 jurisdictional electric utilities. Therefore, modifications to a Commission
10 Decision that only addresses APS's requirements until 2015 do not accomplish
11 that purpose. As Staff expressed in the workshops addressing competitive
12 procurement practices, it was expected that those Best Practices would
13 eventually be rolled into a formal Integrated Resource Planning ("IRP")
14 rulemaking process. Commission Staff is currently holding a series of
15 workshops where the development of IRP rules are under discussion. IRP rules
16 are the appropriate place to address competitive procurement practices because
17 resource procurement is the culmination of the planning process. In addition,
18 the IRP rules will apply to all jurisdictional utilities, not just APS, as would be
19 the case if the Best Practices were incorporated into the self-build provisions of
20 Decision No. 67744.

21 A final consideration is the fact that the Best Practices were only recently
22 approved, and giving everyone some time to see them in practice would be most
23 beneficial.

24 For all of these reasons, there is no need for the Commission to modify Decision
25 No. 67744 to include the Best Practices.
26

1 Q. DO YOU BELIEVE IT IS APPROPRIATE TO MODIFY THE
2 COMMISSION'S BEST PRACTICES IN THIS PROCEEDING AS
3 SUGGESTED BY MR. TRAMMEL?

4 A. No, I do not. It would not be appropriate to change recently approved
5 procurement practices only for a single utility. Any changes to guidelines that
6 were developed to apply to all jurisdictional utilities should also apply equally to
7 all those utilities. In any event, each of the modifications proposed by Mr.
8 Trammel was discussed in the workshops during which the Best Practices were
9 crafted, and Mr. Trammel and his colleagues had an opportunity to participate in
10 those workshops. The modifications listed in his testimony have already been
11 adequately addressed through the workshop process and are reflected in the
12 current Best Practices that were approved by the Commission.

13 Q. PLEASE BRIEFLY DISCUSS EACH OF MR. TRAMMEL'S
14 PROPOSALS RELATING TO THE INDEPENDENT MONITOR AND
15 BIDDERS' FEES.

16 A. Mr. Trammel's proposals are as follows:

17 Independent monitor hired by, and reports to, the Commission. This option for
18 the role of the IM was discussed at length in the Best Practices workshops.
19 Commission Staff chose not to structure the position of the IM in this manner,
20 and the Commission approved specific procedures for the selection of IM's and
21 their independent reporting. The Company supports the Staff's choice and the
22 Commission decision.

23 Independent monitor as bid evaluator. This option was also specifically
24 discussed at the workshops, including that this dual role for the IM (*i.e.*, monitor
25 and evaluator) was not justified because of the expected additional costs
26 involved, and because the utility is in the best position to evaluate RFP bids in
each individual circumstance. Furthermore, a bid evaluator would need to have

1 full decision-making capability, and any final RFP award would necessarily
2 have to carry with it a presumption of prudence.

3 Bidding fees capped. Bid fees were also discussed at the workshops. The
4 current Best Practices guidelines place no restrictions on the imposition of
5 bidders' fees, which is appropriate. Each solicitation is different and bidders'
6 fees must be structured to meet the specific needs of each RFP. If bidders' fees
7 are kept artificially low, any additional costs over and above the fees will
8 ultimately be borne by the utility customer. It is ironic that Mr. Tramell has
9 recommended significantly expanding the responsibilities of an IM, which
10 would correspondingly result in higher IM fees, while also proposing that bid
11 fees be capped at a prescribed, nominal level.

12
13 Single fee for multiple bids from one bidder. It is not necessary to restrict the
14 solicitation process to one methodology of assigning bidding fees. In past RFPs,
15 APS has chosen different fee structures to achieve the best response for each
16 individual process. The Company has assessed a fixed fee per bidder, a fee per
17 bidder per site, and, in some cases, no fee at all. Mandating specifics on bid fees
18 is an unnecessary and unproductive step to micro-manage the utilities
19 solicitations.

20 Open entire bid evaluation process to the public. This recommendation is
21 generally anti-competitive and may limit the Company's ability to provide our
22 customers with cost-effective generation. It ignores the fact that much of the
23 data produced by the Company and received from bidders is competitively
24 confidential. APS currently provides RFP bids and bid evaluation information
25 to Staff pursuant to a confidentiality agreement, and, where appropriate, non-
26

1 confidential information is discussed in public forums. Mr. Trammel's
2 suggestion that the information should be provided to and released by the IM
3 puts a great burden on the monitor, considering that the IM already has
4 established reporting responsibilities in the current Best Practices. As a result,
5 such a requirement would increase the cost of bid evaluation significantly.

6 **Q. MR. TRAMMEL ALSO SUGGESTS THAT AN OUTRIGHT**
7 **PROHIBITION OF UTILITY SELF-BUILD GENERATION PROJECTS**
8 **WOULD ENHANCE CUSTOMER BENEFITS. DO YOU AGREE?**

9 **A.** Absolutely not. "Self-build," as defined by Decision No. 67744 is equivalent to
10 any type of utility ownership. Mr. Trammel's recommendation is a blatant
11 attempt to prohibit certain potential market competitors, namely developers,
12 engineering/procurement/construction contractors, and owners of existing power
13 plants, from participation. The Commission must guard against letting the
14 pendulum swing so far as to give certain market participants the upper hand in
15 procurement by limiting the ability of utilities to seek out the best commercial
16 options. If any positive experience came out of California earlier in this decade,
17 it is the knowledge that the market cannot be given unfettered ability to hold the
18 public hostage to special interests. Prohibition of any option for utility
19 procurement is inappropriately restrictive, outright anti-competitive, and as
20 such, not in the best interest of our customers. This issue has been adequately
21 discussed, and sufficiently resolved in Decision No. 67744, where the
22 Commission directly stated that utilities must be permitted to pursue self-build
23 generation projects if reasonably priced resources are not available in the
24 wholesale market.

25 **Q. MR. TRAMMEL COMPARES THE RISKS AND BENEFITS OF**
26 **UTILITY OWNED GENERATION AND INDEPENDENT POWER**
PROJECTS, AND IMPLIES THAT THE UTILITY CAN SIMPLY PASS

1 **ON ANY COST OVERRUNS OR EXPENSES RELATED TO POOR**
2 **PERFORMANCE ON TO THEIR CUSTOMERS. HOW DO YOU**
3 **RESPOND TO THAT POSITION?**

4 A. Mr. Trammell's discussion overlooks the fact that utility-owned generation can
5 include fixed price bids from developers, asset owners and EPC contractors.
6 Also, whether a utility acquires a generation facility from one of these entities or
7 if the utility was to build the plant, the Company has an obligation to act
8 prudently to acquire resources for its customers. The Commission reviews the
9 Company's costs and procurement activities and would not allow cost recovery
10 for actions it determined were imprudent.

11 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

12 A. As a competitive business, one of the Merchant Intervenor's primary goals is to
13 maximize profits. They are not subject to the same regulatory oversight and
14 obligation to serve, as are electric utilities. They do not plan for electric
15 customers' needs and are not held accountable if those needs are not met in a
16 reliable and reasonable economic manner. Neither the utilities, nor the
17 regulators that oversee them, should hand over the reins of responsibility for
18 securing energy to merchant entities. The self-build provisions of Decision No.
19 67744, along with the recently adopted procurement Best Practices, provide
20 constructive and appropriate requirements that give APS the flexibility it needs
21 to make necessary resource acquisition decisions, as well as providing all market
22 participants a fair chance to compete for the utility's needs. The wishes
23 expressed by Mr. Trammell and Mr. Roberts are not new—Merchant Intervenor's
24 have aired these points in multiple recent proceedings, where they received
25 careful consideration from the Commission. The Commission has made
26 decisions that support responsible procurement, and it is time to shed these old

1 arguments and move forward. Both the Staff witness and the RUCO witness
2 recognize this fact; in their testimony each states that there is no need to modify
3 the self-build provisions of Decision No. 67744. Additionally, the best forum in
4 which to address modification or mandate of the Commission's Best Practices
5 for procurement is in the IRP rulemaking proceeding, where proposed changes
6 can be fully discussed among all stakeholders and interested parties.

7 In my direct testimony, I discussed the Company's proposed timetables for
8 Commission action on regulatory approval of self-build applications to ensure
9 that the Company is able to pursue cost effective procurement options while
10 opportunities exist. I continue to recommend that the Commission establish
11 timelines for the self-build procurement approval process for the reasons set
12 forth in my direct testimony, which can be addressed without modifying
13 Decision No. 67744.

14
15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 **A.** Yes, it does.
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